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Corbin R. Davis
Clerk, Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

August 30, 2005

Dear Mr. Davis,

I am writing on behalf of the Judicial Conference of the State Bar of Michigan to advise Judicial Conference voted unanimously to oppose ADM 2004-42 at the July 15, 2005, Conference meeting.

Enclosed for consideration are Judicial Conference Comments on ADM 2004-42 that more fully explain the reasons for opposition to the proposed order. The enclosed comments represent a synthesis of member discussion at the July 15 meeting and member reflections contributed post meeting. It is clear from the continuing discussion that Conference members share a deep commitment to ensuring the rights of litigants to access the court system are respected and preserved by timely case processing. As a result of that commitment, members have given significant thought to how best to address systemic weaknesses related to case processing. Since case delays can result from a complexity of issues, the Conference urges development of accurate and consistent caseload management data before resorting to discipline for failure to meet 'standards' that don't even currently exist.

Judicial Conference urges the Supreme Court not to adopt the provisions of ADM 2004-42.

Sincerely,

Kathryn J Root
Chairperson

JUDICIAL CONFERENCE COMMENTS ON ADM 2004-42

The Notice of Public Administrative Hearing for ADM 2004-42 states that the issue for the Supreme Court is whether the rules on undecided matters and speedy trial reporting should be consistent with caseload management guidelines. Unfortunately, this issue is lost in the controversy surrounding the proposed directive to the state court administrator to file complaints against individual judges with the Judicial Tenure Commission. It is further complicated by the fact that the State Court Administrative Office has not yet successfully implemented caseload in the trial courts.

In 2003, the Supreme Court adopted ADM 2003-7, effective January 1, 2004, which directed the State Court Administrator, within available resources, to assist trial courts in implementing caseload management plans designed to achieve the timelines set forth in the administrative order. The judicial conference is concerned with the obvious administrative gap between this general non-funded statement and sanctions against an individual judge for failing to comply with the time guidelines presumed included in a court's caseload management plan.

The Judicial Conference is pleased that the Michigan Supreme Court is focusing on caseload management in the trial courts because we believe that the processing of cases at the trial court level is the primary function of the judiciary. We also believe that the caseload system each court has determines the success each judge may have in fairly and efficiently adjudicating cases brought before him or her. As the administrative head of the judiciary, the Supreme Court has an obligation to require and support the development of caseload plans or systems in every trial court in the state. Unfortunately, this effort has been inconsistent over the last 25 years. Going back to the adoption of Administrative Order 1991-4, the Court adopted guidelines for case processing and required every court to draft and file with SCAO a case management plan. Trial courts filed plans but there was no feedback regarding the adequacy of the plans nor any guidance on how to implement the plans. The belief seemed to be that once a plan was drafted and filed, nothing else needed to be done to ensure that its goals were being achieved in individual courtrooms. In fact, the Michigan Judicial Institute offered training to judges on the subject only 3 times between 1984 and 2002. It was not until 2002 that it was on the agenda for the biennial chief judge meeting. Due to budget cuts, the staff of SCAO is no longer able to service individual courts by conducting audits and other analysis to assist in the identification of systemic caseload problems.

In 2002, SCAO convened a one day meeting of judges and court administrators to review Administrative Order 1991-4. The group recommended numerous substantive amendments. Changes reflecting the changes in a court's jurisdiction were recommended, such as putting the time guidelines for juvenile court cases under circuit court jurisdiction. The group also recommended time guidelines for certain types of cases not covered by the AO 1991-4, such as post-judgment work. Subsequently, the Supreme Court adopted AO 2003-7. Unfortunately, the amended AO merely corrected

the jurisdictional changes necessitated by court reorganization. The substantive changes were left out.

The amended AO once again required trial courts to draft and file caseflow plans. Once again, there was, and is, no institutional assistance offered to improve the plans or help in the implementation of changes needed in the court to enable an individual judge to meet the time guidelines in the AO.

We recognize that there are trial courts with excellent and operational caseflow plans. We also recognize that there are individual judges who consistently fail to comply with the time guidelines in AO 2003-7. However, the first concern should be identifying the reason a judge is not meeting the guidelines. You can be one of the hardest working judges in Michigan but still fail to meet the time guidelines if the court's system is not set up in accordance with acceptable caseflow principles.

AO 2003-7 also states: "On further order of the Court, the following time guidelines for case processing are provided as goals for the administration of court caseloads. These are only guidelines...." Unfortunately, ADM 2004-42 refers to the "goals" and "guidelines" as set forth in ADM 2003-7 as "standards".

It is true that the guidelines in ADM 2003-7 are not consistent with the reporting requirements in MCR 8.107 and MCR 8.110. It is also true that the guidelines for caseflow management should be consistent with reporting requirements in order to assess trial court performance as well as the validity of those caseflow guidelines. However, before linking the reporting requirements with the guidelines in ADM 2003-7, and the implications that flow from that linkage, those guidelines should be reviewed.

In its Order adopting ADM 2003-7, the Supreme Court recognized the importance of "available resources" in implementing these plans. Likewise, the success of trial judges in meeting the goals of ADM 2003-7 is also subject to "available resources." The Judicial Conference would suggest that these plans be used to collect data to identify current practice and use that information to identify judges who are persistently dilatory in managing their docket. Many trial courts are only now beginning to collect data.

The best course would be for the Supreme Court to review the substantive changes recommended for amending 1991-4. The Court should fund a team of caseflow management experts to review the filed caseflow plans of each trial court and assist the chief judge in implementing the plans. The plans should provide for collecting data based on the time guidelines for case disposition by judge. Then, and only then, would the state court administrator be in a position to determine if a judge's individual docket practices comply with the principles of the plan. There are often good reasons why cases exceed the guidelines and in a good system, these reasons are easily ascertainable which would make a referral to the JTC inappropriate. Judges should not be punished when they are working in a bad system and the individual judge is powerless to make the necessary changes to improve the court's caseflow. Similarly, ineffective judges should

not be allowed to blame the court's caseflow plan or system for his or her unwillingness to work in accordance with good caseflow principles set forth in the court's plan.

Certainly, there have been times when a judge has failed to work and a referral to the JTC could be made without an analysis of the caseflow plan for the court. However, these situations have been dealt with without a change in the rules. The embodiment of this procedure in an administrative order would suggest that the Court wants a more thorough review of the docket practices of individual judges. In this circumstance, the Judicial Conference suggests before an individual judge is subjected to a disciplinary body, the Supreme Court is obligated to make sure that each trial court is administratively structured to process cases within the validated time guidelines. Only then can the performance of an individual judge be honestly evaluated for compliance with time guidelines.